

summary, all parties responding to the proposed rules believed that the requirement for a separate document for every LOA went further than was necessary to address the perceived problem.

The final conclusions of the FPSC hearing officer were the following. Slamming, or unauthorized PIC changes, remains a major source of complaints about long distance service in Florida. There were approximately 1,000 in 1994. However, the hearing officer concluded there were legitimate concerns with the proposed rule. The single document requirement proposed would eliminate forms of inducement which seem to be well received by the public and beneficial to competition, specifically check-LOAs, and perhaps others which have not been the source of complaints. Moreover, it appears that many of the documents causing problems were infirm for reasons other than the fact the LOA was combined with an inducement. Some did not meet the requirements of existing LOA content, or were confusing even if a single document. Tailoring such promotions solely to comply with Florida restrictions could affect the availability of incentives apparently desired by the public. Also, it requires companies to spend additional sums of money to develop marketing strictly for Florida.

While making the LOA a separate document has a certain appeal as a straight-forward objective measure, there are no assurances that it would eliminate or materially affect the problem of persons being lured to sign up for a new carrier in pursuit of some other

reward or inducement. To some extent, no matter what form the advertising takes, some will see a misleading inducement where others see a clearly stated invitation.

The Hearing Officer concluded also that there may be legitimate concerns about the impact of the rule as proposed on commercial free speech.

The major changes made to the proposed rule are as follows:

(1) The separate document requirement for LOAs has been removed;

(2) The reference to the telecommunications company to which service is being charged must identify the actual service provider setting charges, not an underlying facilities based carrier whose service is resold. Apparently, there was a problem with the underlying carrier being advanced as the provider of the service, which was confusing to customers;

(3) The specific statement and type font requirement have been eliminated. Instead a statement that the customer's signature will effect a service change is required along with a statement of what comes with it, i.e., that there can only be one service provider per number and that the LEC may charge for the switch;

(4) A standard of "misleading or deceptive" for the document is established and a definition added;

(5) A section on non-English documents is added.

The FPSC, at the May 2, 1995 Agenda, endorsed the hearing officer's conclusions and adopted the attached final rules. (Attachment A) We thought that in view of our earlier filing of comments in your docket, we should alert you to these final rules.

Respectfully submitted,



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1 25-4.118 Interexchange Carrier Selection

2 (1) The primary interexchange company (PIC) of a customer
3 shall not be changed without the customer's authorization. A local
4 exchange company (LEC) shall accept PIC change requests by
5 telephone call or letter directly from its customers.

6 (2) A LEC shall also accept PIC change requests from a
7 certificated interexchange company (IXC) acting on behalf of the
8 customer. A certified IXC that will be billing in its name may
9 submit a PIC change request, other than a customer-initiated PIC
10 change, directly or through another IXC, to a LEC only if it has
11 certified to the LEC that at least one of the following actions has
12 occurred prior to the PIC change request:

13 (a) the IXC has on hand a ballot or letter from the customer
14 requesting such change; or

15 (b) the customer initiates a call to an automated 800 number
16 and through a sequence of prompts, confirms the customer's
17 requested change; or

18 (c) the customer's requested change is verified through a
19 qualified, independent firm which is unaffiliated with any IXC; or

20 (d) the IXC has received a customer request to change his PIC
21 and has responded within three days by mailing of an information
22 package that includes a prepaid, returnable postcard and an
23 additional 14 days have past before the IXC submits the PIC change
24 to the LEC. The information package should contain any information
25 required by Rule 25-4.118(3).

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~~struck-through~~ type are deletions from existing law.

1 3 a. The ballot or letter submitted to the interexchange
2 company requesting a PIC change shall include, but not be limited
3 to, the following information (each shall be separately stated):

4 1. Customer name, phone/account number and address;

5 2. Company and the service to which the customer wishes to
6 subscribe;

7 3. Statement that the person requesting the change is
8 authorized to request the PIC change; and

9 4. Customer signature.

10 (b) Every written document by means of which a customer can
11 request a PIC change shall clearly identify the certificated
12 telecommunications company to which the service is being changed,
13 whether or not that company uses the facilities of another carrier.
14 The page of the document containing the customer's signature shall
15 contain a statement that the customer's signature or endorsement on
16 the document will result in a change of the customer's long
17 distance service provider and explain that only one long distance
18 service provider may be designated for the telephone number listed;
19 that the customer's selection will apply only to that number, and
20 that the customer's local exchange company may charge a fee to
21 switch service providers. Such statement shall be clearly legible
22 and printed in type at least as large as any other text on the
23 page. If any such document is not used solely for the purpose of
24 requesting a PIC change, then the document as a whole must not be
25 misleading or deceptive. For purposes of this rule, the terms

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1 "misleading or deceptive" mean that, because of the style, format
2 or content of the document, it would not be readily apparent to the
3 person signing the document that the purpose of the signature was
4 to authorize a PIC change, or it would be unclear to the customer
5 who the new long distance service provider would be; that the
6 customer's selection would apply only to the number listed and
7 there could only be one long distance service provider for that
8 number; or that the customer's local exchange company might charge
9 a fee to switch service providers. If any part of the document is
10 written in a language other than English, then the document must
11 contain all relevant information in the same language.

12 (c) If a PIC change request results from either a customer
13 initiated call or a request verified by an independent third party,
14 the information set forth in (3)(a)1.-3. above shall be obtained
15 from the customer.

16 (d) Ballots or letters will be maintained by the IXC for a
17 period of one year.

18 (4) Customer requests for other services, such as travel card
19 service, do not constitute a change in PIC.

20 (5) Charges for unauthorized PIC changes and higher usage
21 rates, if any, over the rates of the preferred company shall be
22 credited to the customer by the IXC responsible for the error
23 within 45 days of notification. Upon notice from the customer of
24 an unauthorized PIC change, the LEC shall change the customer back
25 to the prior IXC, or another of the customer's choice. The change

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1 must be made within 24 hours excepting Saturday, Sunday and
2 holidays, in which case the change shall be made by the end of the
3 next business day. In the case where the customer disputes the
4 ballot or letter, the IXC appearing on the ballot/letter will be
5 responsible for any charges incurred to change the PIC of the
6 customer.

7 (6) The IXC shall provide the following disclosures when
8 soliciting a change in service from a customer:

9 (a) Identification of the IXC;

10 (b) That the purpose of visit or call is to solicit a change
11 of the PIC of the customer;

12 (c) That the PIC can not be changed unless the customer
13 authorizes the change; and

14 (d) Any additional information as referenced in Rule 25-
15 24.490(4).

16 Specific Authority 350.127(2), F.S.

17 Law Implemented 364.01, 364.19, 364.285, F.S.

18 History: 3/4/92, 5/31/95.

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CITATIONS PERTAINING TO FALSE & DECEPTIVE ADVERTISING

Specifically, in Consumers Association of District of Columbia (Television Advertising), 32 F.C.C.2d 400, 404-405 (1971), the Commission stated:

"As we have previously made clear, the main thrust in the field of deceptive advertising must continue to come from the Federal Trade Commission, the agency specifically created by Congress to deal with that problem. That agency, unlike this Commission, has the capacity to formulate standards of deceptive advertising which are applicable to the various media. It thus has the scientific and related expertise which we lack in this area."

Since then, the Commission has repeated and reemphasized these conclusions in a variety of contexts. For example, in Petition of Action for Children's Television, 50 F.C.C.2d 1 (1974) (¶ 30), the Commission that the FTC "has far greater expertise in, and resources for, the regulation of false and deceptive advertising practices" than does the FCC. Again, in Elimination of Unnecessary Broadcast Regulation, 57 Rad. Reg. 2d (P&F) 913 (1985) (¶ 7), the Commission stated that, insofar as false and misleading commercials are concerned, "we believe that this agency has no special expertise . . . which would justify imposing strictures beyond those of the primary law enforcement mechanisms. The FTC is the agency with expertise in determining whether an advertisement is false or misleading."

This recognition of the FTC's greater agency expertise and resources has not been limited to the broadcast arena. For example, in Policies and Rules Concerning Interstate 900 Telecommunications Services, 6 FCC Rcd 6166 (1991) (¶ 26), when assessing the extent of the information that should be included in the preamble to "pay-per-call" services, the Commission gave great weight to the FTC's submission in that rulemaking, in view of its greater expertise in regulating misleading marketing. As the Commission stated there, "we find the comments of the FTC, the federal agency with expertise in dealing with deceptive practices, to be very persuasive" in explaining the basis for limitations in the preamble's contents. The foregoing statements, both in the mass media and common carrier contexts, show that the Commission has conceded that it has no special skill or competence in recognizing marketing practices which may be deceptive or misleading to consumers.